struck by street car, in which the defense was contributory negligence, instruction directing verdict for plaintiff on finding of defendant's negligence, without reference to contributory negligence, held not ground for reversal, under Code 1919, § 6331, where court in five other instuctions required plaintiff's freedom from contributory negligence, and where court charged jury that the instructions should be construed together.

5. Appeal and Error (§ 1170 (1)*)—"Substantial Justice" Done When One Fair Trial on Merits Has Been Had.—"Substantial justice" has been attained in causes tried by juries, within Code 1919, § 6331, providing that no judgment shall be reversed where "Substantial justice" has been done, when litigants have had one fair trial on the merits.

[Ed. Note.—For other definitions, see Words and Phrases, Substantial Justice.]

6. Street Railroads (§ 99 (5)*)—Automobile Driver May Rely on Care on Part of Street Car Operator.—In an action for damages to an automobile, struck by a street car while being backed across street from garage driveway, instruction that plaintiff's employees had a right to assume that car would be operated with ordinary care held proper.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 842.]

7. Trial (§ 260 (1)*)—Refusal of Instruction Covered by Other Instructions Not Error.—Refusal of instruction, fairly and fully covered by other instructions, was not error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 604.]

Error to Hustings Court of Richmond.

Action by Smith & Hicks, Incorporated, against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Affirmed.

T. Justin Moore, E. R. Williams, A. B. Guigon, and *M. M. McGuire,* all of Richmond, for plaintiff in error.

Scott & Buchanan, of Richmond, for defendant in error.

KRITSELIS *v.* PETTY.

Jan. 20, 1921.

[105 S. E. 536.]

1. Negligence (§ 134 (10)*)—Evidence Held to Show Origin of Fire. — Testimony that defendant admitted to witnesses that he started a fire in some straw, and evidence that the fire so started was communicated to plaintiff's house, held sufficient to warrant the jury

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

in connecting defendant with the origin of the fire which destroyed plaintiff's property.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 411.]

2. Negligence (§ 21*)—Mistake in Supposing Fire Estinguished Held Negligence.—The fact that one who negligently started a fire watched it until he thought it was out and could not be communicated against the wind to plaintiff's property does not release him from liability for the destruction of plaintiff's property, after the fire was thereafter revived and communicated to such property by change of the wind.

3. Negligence (§ 58*)—Natural Result of Act Presumed within Contemplation of Wrongdoer.—The natural and probable results of a negligent act are presumed to have been within the contemplation of the party committing the act as probable and proximate results thereof, if he was informed, or by ordinary odservation would have been informed, of the facts and circumstances attending the negligence.

4. Negligence (§ 62 (1)*)—Changing Wind Not Intervening Cause of Fire.—A change of direction of the wind after a fire was negligently started is not an intervening cause, which defeats the right to recover against the person who negligently started the fire.

[Ed. Note.—For other cases, see 10 Va.-W Va. Enc. Dig. 376.]

5. Appeal and Error (§ 1004 (3)*)—Conflicting Evidence Held to Sustain Jury's Valuation of Property Destroyed by Fire.—Where testimony by plantiff as to the value of his goods destroyed by fire is sufficient to sustain a verdict fixing such value, though there was great disparity between the value testified to by plaintiff's witnesses and that by defendant's witnesses, and great disparity between the value given by plantiff at the trial and the value placed on the goods by him for purposes of taxation, refusal of motion for a new trial will not be disturbed.

5. Appeal and Error (§ 1004 (4)*)—Verdict Cannot Be Set Aside Because Court Would Not Have Found Same Amount.—The facts that the Supreme Court of Appeals, acting as a jury, would not have rendered the verdict fixing damages for household goods destroyed by fire which the jury rendered, does not require setting aside the verdict, in the absence of evidence that the jury acted from prejudice or other improper motive, since the assessment of damages is peculiarly the province of the jury, and this is especially so where the trial court, which heard the witnesses testify, declined to interfere with the verdict.

[Ed. Note.—For other cases, see 10 Va.-W. Enc. Dig. 458]

Error to Circuit Court, Halifax County.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Action by Charles Petty against A. K. Kritselis. Judgment for plaintiff, and defendant brings error. Affirmed.

McKinney & Settle, of South Boston, for plaintiff in error.

Jas. H. Guthrie, of South Boston, for defendant in error.

GALLION & GREGORY *v.* WINFREE.

Jan. 20, 1921.

[105 S. E. 539.]

1. **Appeal and Error (§ 970 (3)*)—Trial (§ 59 (2)*)—Order of Introduction of Evidence in Trial Court's Discretion.**—The order of introduction of evidence is left largely to the discretion of the trial courts, whose ruling thereon will not be disturbed unless plainly prejudicial to the complaining party.

2. **Evidence (§ 271 (7)*)—Self-Serving Declarations as to Broker's Contract Held Inadmissible.**—In an action for damages for breach of an oral contract for division of land broker's commission, the testimony of plaintiff and others, to the effect that plaintiff had said previous to the sale that he was interested in the deal and had a contract with defendants, was self-serving and inadmissible on direct examination, where plaintiff's testimony was unimpeached.

3. **Appeal and Error (§ 1177 (5)*)—Where Judgment Cannot Be Entered by Supreme Court, Matter Will Be Remanded for New Trial.**—Where, with objectionable testimony stricken, the case was so left that a final judgment could not be entered by the Supreme Court under Code 1919, § 6365, it must be remanded to circuit court for new trial in conformity with the opinion.

Error to Circuit Court, Lunenburg County.

Action by T. E. Winfree against G. L. Gallion and H. C. Gregory, copartners. Judgment for plaintiff, and defendants bring error. Reversed and remanded for new trial.

Geo. E. Allen, of Victoria, for plaintiff in error.

W. Moncure Gravatt, of Blackstone, for defendants in error.

OWENS *v.* COMMONWEALTH.

Jan. 20, 1921.

[105 S. E. 531.]

1. **Criminal Law (§ 201*)—When Proceeding in Another Court Bars Prosecution.**—Under Code 1919, § 4775, as amended by Acts 1920, c. 118, a mere proceeding or prosecution which does not result in a conviction does not bar another prosecution in a state court, but, if

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.